IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8682 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RITABEN N CHAVDA
Versus
THE STATE OF GUJARAT AND OTHERS

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Appearance :
Mr S.K. Jhaveri with Ms Jirga D Jhaveri for the petitioner
Mr Krunal Pandya, Assistant Government Pleader for Respondents Nos.1 to 3 and 5.
Mr ND Nanavati, Senior Advocate assisted by Mr AM Parekh for Respondent No.4

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 03/05/2007

ORAL JUDGMENT:

Rule. Mr Krunal Pandya, learned Assistant Government Pleader waives service of Rule for respondents nos.1 to 3 and 5. Mr A.M.Parekh waives service of Rule for respondent No.4. At the request of the learned advocates for the parties, the matter is taken up for final hearing today itself.

The petitioner applied for grant of licence to run fair-price shop under the Scheme known as Pandit Din Dayal Grahak Bhandar Yojana. After the marriage of the petitioner, the petitioner was granted licence by the Collector, respondent No.5 on 8.12.2005. Respondent No.4 who was also in the run challenged the said decision of the Collector in appeal before respondent No.1. The said appeal was allowed by respondent No.1 by order dated 14th April 2006. Hence, this petition.

The main ground in this petition is that respondent No.1 has failed to consider the fact that the petitioner was ordinary resident of village Kolavada and that she was staying there since her birth. It is the say of the petitioner that she got married but instead of her going to husband's place, her husband started residing with her at village Kolavada. Therefore, she continued to be the local resident of village Kolavada. However, this fact has not been considered properly by respondent No.1 and a conclusion is drawn that she had ceased to be local resident of Kolavada and therefore her allotment has been cancelled.

I have heard Mr S.K. Jhaveri with Ms Jirga Jhaveri for the petitioner and Mr ND Nanavati, learned Senior Advocate, appearing with Mr Ashok Parekh for respondent No.4 and Mr Krunal Pandya, learned Assistant Government Pleader for respondents Nos.1 to 3 and 5. From the submissions advanced by the learned counsel for the parties as well

as from the record of this petition it appears that the factual controversy which has arisen in this case is with regard to the residence of the petitioner. This factual aspect has not been properly considered by the appellate authority. There is a circular which also defines the term, “local resident”. Of course, the said Circular has come into existence subsequently. However, considering the aforesaid controversy and the aforesaid Circular, it appears that this aspect is required to be reconsidered by the Collector, that is, respondent No.5 by making the detailed enquiry with regard to the residence of the petitioner at the time of grant of licence and prior thereto. In the circumstances, the impugned order of respondent No.1 is quashed and set aside. The matter is remanded to respondent No.5 for his reconsideration. The exercise has to be carried out on or before 30.09.2007. In the meanwhile the status quo as on today shall continue. It is understood that the Collector will not be influenced by any of the observations which are made in this order.

The petition is allowed. Rule is made absolute. No order as to costs.

(Akshay H Mehta, J.)

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